

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 667/2014**

% **23rd August, 2018**

INTARVO TECHNOLOGIES LTD (PREVIOUSLY KNOWN
AS RT OUTSOURCING SERVICES LTD) THR ITS DIRECTOR

..... Appellant

Through: None.

versus

A R PRINTER POINT THR IS PRORIETOR Respondent

Through: Mr. Somesh Yadav, proxy
Advocate (Mobile No.
8826264455).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code Civil Procedure, 1908 (CPC) impugns the Judgment of the Trial Court dated 18.9.2014 whereby the trial court has dismissed the leave to defend application filed by the appellant/defendant in an Order XXXVII CPC suit.

2. A reading of the plaint shows that the suit is not based upon a dishonoured negotiable instrument or upon a written agreement containing a liquidated liability. All that is stated in the plaint is that

respondent/plaintiff supplied cabling services to the appellant/defendant and as a result of which in terms of the invoices the amount of Rs.2,85,894/- became due and which bills were annexed as Annexure P-3 to the suit.

3. I have examined this aspect in detail in the judgment in the case of *IFCI Factors Limited Vs. Maven Industries Limited and Ors., 2015 (255) DLT 32* and held that a suit under Order XXXVII CPC cannot lie for claiming balance due at the foot of the account and Order XXXVII CPC suit only lies when there is either a negotiable instrument or a written agreement containing a liquidated liability, and which aspects do not exist as per the plaint in the present case, inasmuch as, supply by the respondent/plaintiff to the appellant/defendant is on a project contract/project basis and such an aspect is not a subject matter of the provision of Order XXXVII Rule 1(2) CPC which provision provides the only subject matters on the basis of which Order XXXVII CPC suit can be filed. I am not reproducing herein the ratio of the judgment in the case of *IFCI Factors Limited (supra)*, inasmuch as, the said judgment and ratio is prolix and therefore the same is not reproduced herein to avoid prolixity.

4. In view of the aforesaid discussion, this appeal is allowed. Impugned judgment dismissing the leave to defend application is set aside. Since the suit was not maintainable as an Order XXXVII CPC suit there does not arise the issue of considering of a leave to defend application. The subject suit will be tried as an ordinary suit for recovery of moneys.

5. Parties to appear before the District and Sessions Judge, South-East District, Saket Courts, New Delhi, on 27th September, 2018 and the District and Sessions Judge will now mark the suit for disposal to a competent court in accordance with law by treating the suit as an ordinary suit for recover of moneys.

AUGUST 23, 2018

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VALMIKI J. MEHTA, J